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Supreme Court, U.S.
FILED

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No. . OFFICE OF THE CLERK

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**In The**
**Supreme Court of the United States**

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**Albert L. Peia,**
**Petitioner**

**v.**

**The United States Bankruptcy Court for the District of Connecticut, the United States of America, and Richard M. Coan, Individually, and in His Representative Capacity for the United States Trustee, and John Does 1 – 15,**
**Respondents**

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**On Petition for Writ of Certiorari**
**To The United States Court of Appeals**
**For the Second Circuit**

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# APPENDIX TO
# PETITION FOR WRIT OF CERTIORARI

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**Albert L. Peia, Petitioner Pro Se**
**P.O. Box 370434**
**Reseda, CA 91337-0434**
**(213)219-7649**

63 pp

USDC/CT/NH
OO—cv—2310
Dorsey

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REGISTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of April, two thousand and three.

PRESENT:

Hon. John M. Walker, Jr. Chief Judge
Hon. James L. Oakes,
Hon. Robert A. Katzmann, Circuit Judges.

UNITED STATES COURT OF APPEAL
FILED APR 9 2003
Roseanne B. Mackechnie
SECOND CIRCUIT

Albert Peia,

Plaintiff -Appellant.

-V.-

02-613 8

United States Bankruptcy Court, et al.,

Defendants-Appellees

APPEARING FOR APPELLANT:
ALBERT PEIA, pro Se, Reseda, CA

APPEARING FOR APPELLEE
United States and the
Bankruptcy Court:
ANN M. NEVINS, Assistant
United States Attorney, (Kevin
J. O'Connor, United States
Attorney for the District of
Connecticut, Jeffery A. Meyer,
Assistant United States
Attorney, on the brief),
Bridgeport, CT

APPEARING FOR APPELLEE Richard M. Coan:
TIMOTHY D. MILTENBERGER, Coan, Lewendon,
Gulliver &

Miltenberger, LLC, New Haven, CT

1
2 ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND
3 DECREED that the judgment of the District Court is AFFIRMED.
4 Albert Peia, pro se, appeals from an order of the United
5 States District Court for the District of Connecticut (Peter C.
6 Dorsey, Judge), dismissing his claims brought pursuant to the
7 Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18
8 U.S.C. §§ 1961 et seq., and the Federal Tort Claims Act ("FCTA"),
9 28 U.S.C. §§1346(b), 2671 et seq., against the United States of
10 America, the United States Bankruptcy Court for the District of
11 Connecticut, bankruptcy trustee Richard Coan, and fifteen John
12 Doe defendants. We affirm.
13 Peia filed a complaint in the district court in December
14 2000, alleging the existence of a broad conspiracy to defraud
15 bankruptcy creditors and debtors by theft of surplus funds
16- generated by bankruptcy sales, and to launder drug money through
17 Trump casinos. According to Peia, that conspiracy involved,
18 inter alia, the illegal removal of documents from court files of

bankruptcy proceedings that he instituted, false statements by Bankruptcy Judge Alan Shiff, and intentional delays in the processing of Peia's bankruptcy claims, all of which resulted in adverse judgments against him. Peia also alleged that defendant Coan, who had been appointed as bankruptcy trustee for Peia's estate, failed to fulfill his fiduciary obligations and was responsible for the theft of surplus funds from the sale of the assets of Peia's estate.

The United States (on behalf of itself and the Bankruptcy Court) moved to dismiss pursuant to Fed. R. Civ. P. 12(b) (6) and Coan moved to dismiss pursuant to Fed. R. Civ. P. 12(b) (1). The district court granted the United States's motion to dismiss on the grounds that (1) all RICO and FTCA claims against the United states, except for those based on the conduct of Judges Matz and Shiff, were barred by the statutes of limitations of those acts; (2) Peia's claims against the United States, except for those against Judge Matz, were barred by res iudicata;; (3) any claims against the Bankruptcy Court or the United States based upon the actions of judges in their judicial capacity were foreclosed by

judicial immunity; and (4) the United States was not a proper defendant in a RICO action.

With respect to Coan's motion, the district court found that Peia was required to obtain leave from the court that appointed Coan as his bankruptcy trustee prior to suing Coan in his capacity as trustee, pursuant to Barton v. Barbour, 104 U.S. 126 (1881) (holding that a plaintiff must obtain leave from the bankruptcy court prior to suing a bankruptcy trustee for acts within the scope of his official duties), and that Peia had failed to obtain the necessary permission. See also Lebovitz v. Scheffel (In re Lehal Realty Assocs.), 101 F.3d 272, 276 (2d Cir. 1996)

We review a district court's grant of a motion to dismiss pursuant to Fed. R. Civ. Pro. 12(b) (1) and 12(b) (6) de novo, accepting the allegations contained in the complaint as true and making all inferences in favor of the non-moving party. See King v. American Airlines, Inc., 284 F.3d 352, 356 (2d Cir. 2002). We affirm the district court's order granting the United States' motion to dismiss. As the district court found, Peia's RICO and

FTCA claims are barred by res judicata, except to the extent that Peia's claims are based on acts by Judge Matz. In addition, to the extent that Peia asserts claims against Judges Matz and Shiff, those claims were properly dismissed under the doctrine of judicial immunity. See Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam) (internal citations omitted) (recognizing that judges are immune from suit for all actions taken in their official capacity, and that judicial immunity "is not overcome by bad faith or malice").

We also affirm the district court's order dismissing Peia's claims against Coan because Peia failed to obtain the permission of the appointing court prior to suing Coan in his capacity as bankruptcy trustee. See Lebovitz, 101 F.3d at 276. To the extent that Peia asserts various RICO claims against Coan alleging acts that could not have been committed in Coan's capacity as trustee, those claims are barred by res iudicata.

We have considered appellant's other arguments and find them to be without merit. Accordingly, the decision of the district court is AFFIRMED.

FOR THE COURT:
Roseanne B.MacKechnie, Clerk

By: Lucille Carr
Date: 4-9-03

MICROFILM JUN 8 2001 FILED JUN 8 2001

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
Civ. No. 3:00cv2310 (PCD)

ALBERT L. PEIA,
Plaintiff,
V.
UNITED STATES of America, et al.,
Defendants.

RULING ON DEFENDANT UNITED STATES'S MOTION TO DISMISS

The United States moves to dismiss all Plaintiffs claims. The motion is granted.

I. JURISDICTION

Plaintiff, pro se sues under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §~ 1961-1968, and the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § §1291, 1346, 1402, 2401-2402, 2411-2412, 2671-2680. This court has subject matter jurisdiction pursuant to 18 U.S.C. § 1964(a) and 28 U.S.C. § § 1331, 1346(b)(1).

II. BACKGROUND

The facts are taken as alleged in the complaint.' Plaintiff alleges a broad-ranging conspiracy involving the United States of America, the U.S. Bankruptcy Courts,

various U.S. District Court Judges, various U.S. Bankruptcy Trustees, the U.S. Attorney's Office, Donald Trump, the FBI, and fifteen John Doe defendants. The scheme involves the United States laundering proceeds from illegal drug sales through the New Jersey casinos of Donald Trump and systematically defrauding bankruptcy creditors and debtors through the theft of property and surplus funds generated through bankruptcy sales. Plaintiff

1 Where the timing and interrelation of Plaintiffs previous lawsuits were not clear, the facts have been supplemented by the chronology provided in one of Plaintiffs previous cases, Coan v. Peia (In re Peia), 212 B.R. 217 (D. Conn. 1997).

further alleges fraud and a massive cover-up, effected by misrepresenting court proceedings and removing court documents, as part of the underlying crimes that give rise to his civil RICO claims.

In 1987, Plaintiff commenced an action alleging civil RICO violations in the U.S. District Court for the District of New Jersey to recover money owed to him by a Mr. Dilena. The case was assigned to District Judge Maryanne Trump Barry.2 The thrust of his claim was that Mr. Dilena diverted funds owed to Plaintiff and co-mingled them with illicit drug profits that were then laundered through the Trump casinos.

Contemporaneous to the 1987 RICO action, Plaintiff claims that he informed Assistant U.S. Attorney Jonathan Lacey of the RICO scheme and provided him with documents to support his theory. After no answer from Mr. Lacey for several months, Plaintiff learned Mr. Lacey was no longer with the U.S. Attorney's office and that his documents could not be found. Plaintiff delivered another package of the same documents several months later

to U.S. Attorney Sam Alito? After no contact for several months Plaintiff learned that Mr. Alito was no longer working in the U.S. Attorney's office and that his documents could ~~not be~~ located. Plaintiff then attempted to tell his story to agents of the FBI, but they were not receptive.

As a result of deliberately slow proceedings in his 1987 RICO action, Plaintiff filed for bankruptcy in New Jersey in 1988. Later in 1988, he sought to recuse Judge

2 Judge Barry subsequently was appointed to the Court of Appeals for the Third Circuit.

3 Plaintiff incorrectly refers to Mr. "Allito." Mr. Alito subsequently was appointed to the Court of Appeals for the Third Circuit.



Barry because she was the sister of Donald Trump, owner of the Trump Casinos involved in the RICO scheme. At this time Plaintiff met with then U.S. Bankruptcy Trustee Hugh Leonard to convince him to join Plaintiffs motion to recuse. Mr. Leonard declined. The 1987 RICO action was dismissed in 1989.

In March 1989, Plaintiff filed a petition for Chapter 13 bankruptcy in Connecticut.

In September 1989, this action was dismissed. Also in September 1989, prior to when his

1989 Connecticut bankruptcy action was dismissed, Plaintiff initiated a Chapter 7 bankruptcy petition in Virginia.

The 1989 Connecticut proceedings were not consummated according to law,

causing Plaintiff an undisclosed yet substantial financial loss. As a result, Plaintiff sent a

notice of claim, pursuant to the FTCA, to the U.S. Attorney General sometime in late 1991. Apparently, the United States did not respond to Plaintiffs notice of claim.

In April 1992, Plaintiff filed a second RICO action against Mr. Dilena and others in the U.S. District Court for the District of Connecticut. That action eventually was dismissed without prejudice sometime in 1996. Also in 1992, Plaintiff filed two more separate Chapter 13 bankruptcy actions in Connecticut.

In January 1993, U.S. Bankruptcy Court Chief Judge Alan H.W. Shiff made false representations regarding a hearing date for one of Plaintiffs two 1992 Connecticut bankruptcy actions. This happened during contempt proceedings against Plaintiff for violating a ban on filing bankruptcy petitions. The contempt charges were eventually

Although not clear, for purposes of this ruling this court will presume the notice of claim was sent less than two years after the dismissal of his Connecticut Chapter 13 bankruptcy in September 1989, thus escaping the FTCA's two-year statutory time bar. See 28 U.S.C. § 2401(b).

3

dropped, but not before Plaintiff suffered financial loss due to fines imposed and due to his inability to proceed with bankruptcy actions. Judge Shiffs use of fraudulently misdated notices of hearings was in furtherance of the scheme to conceal money laundering activities, theft, and bankruptcy fraud.

On December 5, 1996, Judge Shiff dismissed Plaintiffs Connecticut Chapter 13

bankruptcy proceedings.5 He did this in furtherance of the RICO conspiracy. As a result of Judge Shiffs false statements, a separate Chapter 13 bankruptcy proceeding begun in California was also dismissed. In May 1996, Mr. Richard Coan was appointed U.S. Bankruptcy Trustee to Plaintiffs bankruptcy estate. Mr. Coan, as part of a cover-up for the RICO scheme, sold real property belonging to Plaintiff and in doing so unlawfully withheld surplus funds from the sale. Mr. Coan was also responsible for the theft of personal property belonging to Plaintiff.

In 1999, Plaintiff commenced an action in the U.S. District Court for the Central District of California, Peia v. United States, No. CV 99-02633 (C.D. Cal. Nov. 24, 1999), affd, 246 F.3d 675 (9th Cir. 2000) (unpublished), cert denied, 121 S. Ct. 1737 (2001), alleging the facts and injuries above. The action was assigned to District Judge A. Howard Matz. All claims against the United States were dismissed on the merits with prejudice. Plaintiff appealed. The appellate court affirmed the dismissal. Plaintiff now alleges Judge Matz, as part of the RICO conspiracy, fraudulently misrepresented the proceeding in Plaintiffs California case.

5 It is not clear from the complaint which of Plaintiffs bankruptcies was dismissed.



Plaintiffs final allegation is that fifteen John Doe defendants, presumably employees of the United States, acted in a negligent manner in furtherance of the RICO scheme.

On December 4, 2000, Plaintiff filed the present complaint. Plaintiffs claims

include violations of RICO, theft, fraudulent concealment, fraudulent misrepresentation,[6] and failure to supervise. The United States now moves to dismiss. Plaintiff opposes the motion.

## III. DISCUSSION

### A. Standard of Review

The United States improperly moves to dismiss all Plaintiffs claims under FED. R. Civ. P. 1 2(b)(6), arguing in part the statute of limitations and res judicata. A motion to dismiss under FED. R. Civ. P. 12(b)(6) looks to the sufficiency of the complaint only. Here the United States asks the court to consider other facts, namely, the date the present complaint was filed and the contents of the complaint in the 1999 lawsuit. When moving to dismiss based on facts beyond the bare face of the complaint, the motion is properly pursuant to FED. R. Civ. P. 12(c), judgment on the pleadings. The United States's motion is construed as such. Upon motion for judgment on the pleadings, pursuant to FED. R. Civ. P. 12(c), the court "appl[ies] the same standard as that applicable to a motion under Rule 12(b)(6)." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994).

A complaint may not be dismissed under Rule 1 2(b)(6) unless the movant

6 Not reached is whether a claim for

misrepresentation against the United States is available under the FTCA.

5

demonstrates "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."Conley v..Gibson, 355 U.S. 41, 45-46 (1957); see FED. R. Civ. P. 12(b)(6). The factual allegations are presumed to be true, and all factual inferences are to be drawn in Plaintiffs favor. ~ Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). As a pro se party, Plaintiff is entitled to some deference in meeting pleading requirements. S.~ Haines v. Kemer, 404 U.S. 519, 520 (1972) (per curiam).

B. Dismissal Due to Statutes of Limitations

The present action was filed on December 4, 2000. The statute of limitations for civil RICO claims is four years. Agency Holding Corp. v. Malley-Duff& Assocs.. Inc., 483 U.S. 143, 156 (1987). All of the activity in all counts of the complaint, with the exception of Judge Matz's 1999 alleged misrepresentation of the record and Judge Shiffs

1996 order of dismissal, occurred on or before December 4, 1996. Accordingly, all civil RICO claims, other than arising from either of these two events, are time-barred.7

The statute of limitations for FTCA claims is two years. 28 U.S.C. § 2401(b). All of the activity in all counts of the complaint, with the exception of Judge Matz's 1999 alleged misrepresentation of the record, occurred on or before December 4, 1998.

Accordingly, all FTCA claims, other than arising from this dismissal, are time-barred.

Plaintiff argues that the doctrines of fraudulent concealment, equitable estoppel, and equitable tolling preclude any of his claims from being time-barred. As to the Judge Matz and Judge Shiff are not named as defendants in the caption of Plaintiffs complaint.

Accordingly, all claims against them are waived, even though they are referred to as defendants in the body of his complaint.

6

doctrine of fraudulent concealment, "[t]he doctrine is properly invoked only if a plaintiff establishes affirmative conduct upon the part of the defendant which would, under the circumstances of the case, lead a reasonable person to believe that he did not have a claim for relief." Pincay v. Andrews, 238 F.3d 1106, 1110 (9th Cir. 2001) (quoting YQ11~..y.. D.A. Davidson & Co., 816 F.2d 1406, 1415 (9th Cir. 1987)). While Plaintiff does allege separate acts of fraud and concealment of documents by the United States, those acts

serve as the basis for establishment of his claims, rather than conduct that led Plaintiff to reasonably believe he did not have a claim as the exception requires.

As to the doctrine of equitable estoppel, "equitable estoppel is invoked in cases where the plaintiff knew of the existence of his cause of action, but the defendant's conduct caused him to delay bringing his lawsuit." Dillman v. Combustion Eng'g. Inc., 784 F.2d 57, 61 (2d Cir. 1986) (quoting Cerbone v. Int'l Ladies' Garment Workers'Union, 768 F.2d 45, 50 (2d Cir. 1985)). Plaintiff does not allege that any of the United States's actions prevented or delayed him from pursuing any claims. Indeed, Plaintiff seems to be anything but prevented from pursuing his claims. His own complaint lists no less than nine separate actions commenced since his discovery of the RICO conspiracy in 1987.

As to the doctrine of equitable tolling, "[a] statute of limitations may be tolled as necessary to avoid inequitable circumstances. Equitable tolling applies as a matter of fairness where a [party] has been prevented in some extraordinary way from exercising his rights." Iavorski v. INS, 232 F.3d 124, 129 (2d Cir. 2000) (internal citations and quotation marks omitted and second alteration in the original). Plaintiff does not allege



any circumstances that would have prevented him from filing any claims at any time.

C. Dismissal Due to Res Judicata

The United States moves to dismiss Plaintiffs entire complaint on the basis of res judicata because all his claims have previously reached a final judgment on the merits.

"Res judicata... makes a final, valid judgment conclusive on the parties, and those in privity with them, as to all matters, fact and law, [that] were or should have been adjudicated in the proceeding." Waldman v. Village of Kiryas Joel, 207 F.3d 105, 108 (2d Cir. 2000) (citation omitted and alterations in the original). Prior suits involving the same claim or common nucleus of operative facts have a claim preclusive effect on all subsequent suits, barring further litigation. Wai~m~n, 207 F.3d 105. "To ascertain whether two actions spring from the same 'transaction' or 'claim,' we look to whether the underlying facts are 'related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations... ." ~ at 108 (citation omitted).

Upon examination, Plaintiffs first amended complaint in his 1999 California action, Peia v. United States, No. CV 99-02633 (C.D. Cal. Nov. 24, 1999), alleged that Judge Shiffs 1996 order of dismissal was the basis for civil RICO claims. This common nucleus of operative facts between the suits (and indeed common legal claims) precludes his present civil RICO claim against the United States and the U.S. Bankruptcy Courts based on Judge Shiff's 1996 order of dismissal.

8 Upon examination, Plaintiff's complaint in the present case is almost factually identical to his first amended complaint in his 1999 California

action, Peia v. United States, No. CV 99-02633 (C.D. Cal. Nov. 24, 1999), and moreover seeks to address the same claims. This common nucleus of operative facts between the suits provides an alternative basis to dismiss the claims previously dismissed under the statute of limitations. The only new facts alleged are the addition of Judge Matz as a member of the RICO scheme and his predicate acts of misrepresentation. As these acts necessarily could not have been part of the complaint in that suit, res judicata would not be applicable to them.

9 Subsequent to filing his memorandum in opposition, Plaintiffs petition was denied. 121 S. Ct. 1737 (2001).

10 Nor does the statute of limitations for FTCAclaims vary from district to district. ~ 28 U.s.c.§ 2401(b).

Plaintiff asserts that the pendency of his petition for a writ of certiorari to the U.S.

Supreme Court from the Ninth Circuit's affirmation of the dismissal of his California

action precludes it from being a final judgment.9 His argument fails. The pendency of an

appeal does not suspend the claim-preclusive effect of a final judgment from a lower

court. Prager v. El Paso Nat'l Bank, 417 F.2d 1111, 1112 (5th Cir. 1969) (per curiani).

Plaintiff further asserts that "a federal court's dismissal of suit 'on the merits'

based on statute of limitations doesn't necessarily have claim-preclusive effect in another

state." Plaintiff cites to Semtek International Inc. v. Lockheed Martin Corp., 531 U.s.

497 (2001)' in support of his assertion. While this proposition is true in limited instances,

Plaintiffs reliance on this case is misplaced. The present case is distinguishable from

Semtek International, which dealt with state law claims brought to federal court under

diversity jurisdiction. When claims are brought under diversity jurisdiction, the statute of

limitations period may vary in districts located in different states. However, when claims

are brought under RICO the statute of limitations period will not vary from district to

district.'see Agency Holding Corp.. 483 U.S. at 149. In the present case all Plaintiffs
claims are brought under RICO and the FTCA, making Semtek International inapplicable.

D. Dismissal Because the United States is Not Proper Party to a Civil RICO Action

Plaintiff alleges that the United States, acting through the U.S. Bankruptcy Court

for the District of Connecticut, engaged in a pattern of conduct that included inter alia

money laundering, obstruction of justice, bribery, racketeering, theft, fraud, and

misrepresentation. Plaintiff further alleges that these actions give rise to a private right of action against the United States under 18 U.S.C. § 1964. His argument fails. The civil remedy provision of RICO, 18 U.S.C. § 1964, grants a private right of action to a person whose property is injured by reason of a violation of 18 U.S.C. § 1962. Violations of 18 U.S.C. § 1962 must be committed by a person, as defined by 18 U.S.C. § 1961(3). The United States is not considered a person under RICO and therefore as a matter of law is not a proper party to Plaintiffs RICO claim. S~ United States v. Bonanno Organized Crime Family of La Cosa Nostra, 879 F.2d 20, 2 1-27 (2d Cir. 1989). Plaintiffs civil RICO claim against the United States arising out of Judge Matz's 1999 alleged misrepresentation of the record is dismissed."

E. Dismissal for Judicial Immunity

With the dismissal of many of Plaintiffs claims due to the statutes of limitations,

11 Because the United States is not a proper party to a civil RICO action, this provides an alternative basis, in addition to the statute of limitations and res judicata, to dismiss all Plaintiff's civil RICO claims against the United States. It would also provide an alternative basis to dismiss all Plaintiff's civil RICO claims against the U.S. Bankruptcy Courts for although a court may be an enterprise for purposes of RICO, Averbach v. Rival Mfg. Co., 809 F.2d 1016, 1018 (3d Cir. 1987) (citing cases about municipal court systems), it has not been shown that a U.S. Bankruptcy Court is a person for purposes of RICO. Nonetheless, as a federal entity, the U.S. Bankruptcy Courts are entitled to the same immunities as the sovereign. ~ Drake v. Panama Canal Conini'n, 907 F.2d

532, 534 (5th Cir. 1990) (sovereign "immunity extends to the government's officers and agencies"); ~ Golvar v. McCausland, 738 F. Supp. 1090, 1096 (W.D. Mich. 1990) (sovereign immunity applies to federal agency when it is the named defendant).



the dismissal of the civil RICO claim arising out of Judge Shiff's 1996 order of dismissal due to resjudicata, and the dismissal of the civil RICO claim arising out of Judge Matz's 1999 alleged misrepresentation of the record because the United States is not a proper party to a civil RICO claim, the only remaining claim is the FTCA claim against the United States arising out of Judge Matz's 1999 alleged misrepresentation of the record.

"[J] judicial immunity is an immunity from suit.., not overcome by allegations of bad faith or malice.. . ." ~ 502 U.S. 9, 11(1991) (per curiam) (internal citations omitted). "This immunity applies even when the judge is accused of acting maliciously and corruptly. .. ." Pierson v. Ray, 386 U.S. 547, 554 (1967, overruled on othe grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982).

Judicial immunity may only be overcome if the actions complained of are non-judicial in nature or are preformed in "the complete absence of all jurisdiction." Mireles, 502 U.S. at 11. Judge Matz's representation of the record of proceedings in Plaintiffs California case, even if fraudulent and in furtherance of a massive cover-up, was clearly a judicial act performed within the jurisdiction of the court. Since Judge Matz's acts cannot be tortious, the United States cannot be held liable for the result flowing from

them. Plaintiffs final FTCA claim against the United States arising out of Judge Matz's 1999 alleged misrepresentation of the record is dismissed.

12 Judicial immunity also provides an alternative basis, in addition to the United States not being a proper party to a civil RICO claim, to dismiss the civil RICO claim arising out of Judge Matz's conduct.



## IV. CONCLUSION

Defendant United States's motion to dismiss, (Dkt. No. 10), is granted. All claims against the United States and against the U.S. Bankruptcy Courts are dismissed.

SO ORDERED.

Dated at New Haven, Connecticut, June 8 , 2001.

s/ peter c. dorsey
Senior United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
Mar 12 3:36 pm'02
u.s. district court
new haven, conn.

ALBERT L. PEIA,
Plaintiff,

v. Civ. No. 3:00cv2310 (PCD)

UNITED STATES of America, et al.,
Defendants.

RULING ON DEFENDANT COAN'S MOTION TO DISMISS

Defendant Coan moves to dismiss all counts of Plaintiffs complaint against him.

The motion is granted.

I. JURISDICTION

Plaintiff, who is pro Se, sues under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §~ 1961-1968, and the Federal Tort Claims Act, 28 U.S.C. §~ 1291, 1346, 1402, 2401-2402, 2411-2412,2671-2680. This court has subject matterjurisdiction pursuant to 18 U.S.C. § 1946(a) and 28 U.S.C. §~ 1331, 1346(b)(1).

II. BACKGROUND

The court takes the facts as alleged in the complaint.1 Plaintiff alleges a broad-ranging conspiracy involving the United States of America, the U.S. Bankruptcy Courts, various U.S. District Court Judges, various U.S. Bankruptcy Trustees, the U.S. Attorney's Office, Donald Trump, the FBI, and fifteen John Doe defendants. The scheme involves

1 Where the timing and interrelation of Plaintiffs previous lawsuits were not clear, the facts have been supplemented by the chronology provided in one of Plaintiffs previous cases, Coan v. Peia (In re Peia), 212 B.R. 217 (D. Conn. 1997).

the United States government laundering proceeds from illegal drug sales through the New Jersey casinos of Donald Trump and systematically defrauding bankruptcy creditors and debtors through the theft of property and surplus funds generated through bankruptcy sales. The fraud and massive cover-up is effected by the misrepresenting of court proceedings and removing court documents, as part of the underlying crimes that give rise to his civil RICO claims.

In 1987, Plaintiff commenced an action alleging civil RICO violations in the U.S. District Court for the District of New Jersey. The case was assigned to District Judge Maryanne Trump Barry.2 The thrust of his claim there was that a Mr. Dilena diverted funds owed to Plaintiff and co-mingled them with illicit drug profits that were then laundered through the Trump casinos.

As a result of what he perceived as deliberately slow proceedings in his 1987 RICO action, Plaintiff filed for bankruptcy in New Jersey in 1988. Later in 1988, he

sought to recuse Judge Barry because she was the sister of Donald Trump, owner of the

Trump Casinos involved in the RICO scheme. The 1987 RICO action was dismissed in 1989.

In March 1989, Plaintiff filed a petition for Chapter 13 bankruptcy in Connecticut.

In September 1989, this action was dismissed. The 1989 Connecticut proceedings were

not consummated according to law, causing Plaintiff an undisclosed yet substantial

financial loss. Also in September 1989, prior to the dismissal of his 1989 Connecticut

2Judge Barry subsequently was appointed to the Court of Appeals for the Third Circuit.



bankruptcy action, Plaintiff initiated a Chapter 7 bankruptcy petition in Virginia.

In April 1992, Plaintiff filed a second RICO action against Dilena and others in

the U.S. District Court for the District of Connecticut. That action was dismissed without

prejudice in 1996. Also in 1992, Plaintiff filed two more Chapter 13 bankruptcy actions in Connecticut.

In January 1993, U.S. Bankruptcy Court Chief Judge Alan H.W. Shiff allegedly

made false representations regarding a hearing date for one of Plaintiffs two 1992

Connecticut bankruptcy actions. This happened during contempt proceedings against

Plaintiff for violating a ban on filing bankruptcy petitions. The contempt charges were

eventually dropped but not before Plaintiff suffered financial loss due to fines imposed

and due to his inability to proceed with bankruptcy actions. Judge Shiffs use of

fraudulently misdated notices of hearings was in furtherance of the scheme to conceal

money laundering activities, theft, and bankruptcy fraud. On December 5, 1996, Judge Shiff dismissed Plaintiffs Connecticut Chapter 13

bankruptcy proceedings.3 This allegedly furthered the RICO conspiracy. As a result of

Judge Shiffs false statements, a California court dismissed a Chapter 13 bankruptcy

proceeding that Plaintiff had filed there.

In May 1996, Richard Coan, Esq. was appointed U.S. Bankruptcy Trustee to

Plaintiffs bankruptcy estate. Coan, as part of a cover-up for the RICO scheme, sold real

property belonging to Plaintiff and in doing so unlawfully withheld surplus funds from

It is not clear from the complaint which of Plaintiffs bankruptcies was dismissed.

3

the sale. Coan was also responsible for the theft of personal property belonging to Plaintiff.

In 1997, Coan and Judge Shiff sought a "vexatious litigant order," before District

Judge Robert Chatigny, to prohibit Plaintiff from commencing legal action against

anyone related to his bankruptcy case without first obtaining leave of court. Judge

Chatigny held that a "leave of court" requirement was appropriate with respect to Judge

Shiff but that Plaintiff would not be required to obtain leave of court prior to taking any

future legal action against Coan. Coan did not appeal this decision.

On December 4, 2000, Plaintiff filed the present complaint. Plaintiffs claims include violations of RICO, theft, fraudulent concealment, fraudulent misrepresentation, and failure to supervise. On June 8, 2001, all claims against the United States and against the United States Bankruptcy Courts were dismissed. Coan now moves to dismiss for lack of subject matter jurisdiction. Plaintiff opposes the motion.

III. DISCUSSION

A. Standard of Review

Coan improperly moves to dismiss Plaintiffs claim under FED. R. Civ. P. 12(b)(l), arguing that the court lacks subject matterjurisdiction. A motion to dismiss under FED. R. Civ. P. 12(b)(l) looks to the sufficiency of the complaint only. Here, Coan asks the court to consider another fact, specifically, the 1997 decision of Judge Chatigny. See Coan v. Peia (In re Peia), 212 B.R. 217 (D. Conn. 1997). When moving to dismiss based on facts beyond the bare face of the complaint, the motion is properly pursuant to FED. R. Civ. P. 12(c), judgment on the pleadings. Coan's motion is construed as such.



Upon motion for judgment on the pleadings, pursuant to FED. R. Civ. P. 12(c), a court applies the same standard as that applicable to a motion under Rule 12(b)(1). See N. md. Gun & Outdoor Shows, Inc. v. City of S. Bend, 163 F.3d 449, 452 n.3 (7th Cir. 1998); Weisman v. IRS, 972 F. Supp. 185, 186-87 (S.D.N.Y. 1997); Mo her v. Stop & Shop Cos.,

580 F. Supp. 723, 724 (D. Conn. 1984).

Under FED. R. Civ. P. 12(c), "the court must accept all factual allegations in the complaint as true and draw inferences from those allegations in the light most favorable to the plaintiff." See Jaghory v. N. Y State Dep 't of Educ., 131 F.3d 326, 329 (2d Cir. 1997) (applying standard of FED. R. Civ. P. 12(b)(1),(6)). "The court may not dismiss a complaint unless it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him to relief." Id. (omitting internal quotations) (quoting Hoover v. Ronwin, 466 U.S. 558, 587 (1984) (Stevens, J., dissenting)). As apro se party, Plaintiff is entitled to deference in meeting pleading requirements. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

B. Dismissal Due to Res Judicata

Coan argues that the complaint should be dismissed for lack of subject matter jurisdiction because Plaintiff has failed to obtain permission from the bankruptcy court to proceed with this civil action. Coan argues that the doctrine first established in Barton v. Barbour, 104 U.S. 126 (1881), requires Plaintiff to obtain "leave of court" from the appointing bankruptcy court in order to sue a bankruptcy trustee. See Lebovitz v. Scheffel (In reLehalRealtyAssocs.), 101 F.3d 272, 276 (2d Cir. 1996). In response, Plaintiff argues, that Judge Chatigny's decision in In re Peia, 212 B.R. 217, and the doctrine of res

judicata preclude application of the Barton doctrine. In that 1997 proceeding, Judge

Chatigny held that a "vexatious litigant order" based on the Martin-Trigona doctrine, see

Martin-Trigona v. Lavien (In re Martin-Trigona), 737 F.2d 1254, 1261 (2d Cir. 1984),

was not available to Coan because Plaintiff had not yet sued Coan. A vexatious litigant

order based on the Martin-Trigona doctrine requires a court to review previous litigation

between the parties and is appropriate where a plaintiff has abused the court system and

harassed or annoyed another party with frivolous or repetitive proceedings. Plaintiff

argues that Judge Chatigny's decision allows him to sue Coan without "leave of court."

Plaintiffs reliance on the words "leave of court" is misplaced. It is a mere

coincidence that the words "leave of court" appear both in the Barton doctrine and in

Judge Chatigny's opinion. Under the Barton doctrine, in order to sue a plaintiff is

required to get "leave of court" from the bankruptcy court that originally appointed the

bankruptcy trustee. In contrast, under the Martin-Trigona doctrine, in order to sue a

plaintiff is required to obtain "leave of court," not from a bankruptcy court, but from the

court that enters the underlying injunction. Moreover, the two doctrines were created for

different reasons, serve different purposes, and are applicable at different times.

Plaintiff s argument, properly framed, is that Coan should have raised the Barton

doctrine in the 1997 proceeding before Judge Chatigny. and by not raising it then, res

judicata precludes him from raising it now. Plaintiffs argument is rejected. ,

"Res judicata... makes a final, valid judgment conclusive on the parties, and those in privity with them, as to all matters, fact and law, [that] were or should have been adjudicated in the proceeding." Waldman v. Viii. of Kiryas Joel, 207 F.3d 105, 108 (2d



Cir. 2000) (citation omitted and alterations in the original). In the Second Circuit

> [t]he general rule of res judicata is that a valid, final judgment, rendered on the merits, constitutes an absolute bar to a subsequent action between the same parties, or those in privity with them, upon the same claim or demand. It operates to bind the parties both as to issues actually litigated and determined in the first suit, and as to those grounds or issues which might have been, but were actually raised and decided in that action.

Say/or v. Lindsley, 391 F.2d 965, 968 (2d Cir. 1968).

The party seeking application of res judicata bears the burden of establishing its application. See Greenberg v. Bd. of Governors of Fed. Reserve Sys., 968 F.2d 164, 170 (2d Cir. 1992). "Resjudicata involves a three-part test: (1) a final judgment on the merits... ; (2) the same parties, or their privies, as parties to the first judgment; and (3) the same cause of action in the second proceeding." Colonial Acquisition P 'ship v. ColonialatLynnfield, Inc., 697 F. Supp 714, 718 (S.D.N.Y. 1988) (citing Anaconda-Ericsson Inc. v. Hessen (In re Teltronics Set-vs., Inc.), 762 F.2d 185, 190 (2d Cir. 1985)).

Because Plaintiff fails to satisfy the third part, which requires the causes of action to be the same, the first and second parts of the test need not be addressed.

"The Second Circuit has adopted a broad view of what constitutes the same cause of action" forresjudicatapurposes. Bin Saud v. Bank of N.Y . 734 F. Supp 628, 632 (S.D.N.Y. 1990), aff'don other grounds, 929 F.2d 916 (1991). "Actions need not be identical; they only need to be integrally related." Id. "To determine whether claims are 'integrally related' for resjudicata purposes, the Second Circuit has identified three separate but related factors which courts should consider, but no individual factor is



'necessarily dispositive.'" Schenk v. Mine Mgmt. Co., No. 89-CV-97, 1997 WL 31400, at *3 (N.D.N.Y. 1997) (italics in original) (quoting Thompson v. County of Franklin, No. 92-CV-1258, 1996 WL 341988, at *3 (N.D.N.Y. 1996)). The three factors are "whether the same transaction or connected series of transactions is at issue, whether the same evidence is needed to support both claims, and whether the facts essential to the second were present in the first." NLRB v. United Techs. Corp., 706 F.2d 1254, 1260 (2d Cir. 1983). Each of the three factors is addressed in turn. Together, they fail to support a finding that the claims are integrally related for res judicata purposes.

1. Whether the same transaction or connected series of transactionsis at issue

"If the second litigation involved different transactions, and especially subsequent transactions, there generally is no [res judicata]." SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1464 (2d Cir. 1996). Here, the two proceedings do not involve the "same transaction or connected series of transactions." In the former proceeding, Coan sought a "vexatious litigant order" from Judge Chatigny to bar Plaintiff from suing him. The underlying transaction was the long history of litigation commenced by Plaintiff. In the present proceeding, Plaintiff seeks to sue Coan for his actions as a U.S. Bankruptcy Trustee. As the two proceedings involve different transactions, this factor weighs against finding that the claims are integrally related.

2. Whether the same evidence ig needed to support both claims

In order for res judicata to bar a subsequent suit, the party asserting res judicata must show that the two suits are supported by and dependant upon the same evidence.



Schenk, 1997 WL 31400, at *5• Plaintiffs argument is that by not raising the Barton doctrine in the 1997 proceeding, Coan should be barred from using it now.

The evidence at the former proceeding, based on Martin-Trigona, reviewed the quantity and nature of Plaintiffs prior litigation against Judge Shiff and against Coan.

See In re Peia, 212 B.R. at 218-19; see generally In re Martin-Trigona, 737 F.2d 1254.

The evidence in the present proceeding, a suit against Coan for acts as a bankruptcy

trustee, would be fundamentally different, namely, the nature of Coan's acts as a

bankruptcy trustee. This factor weighs against finding that the claims are integrally related.

3. Whether the facts essential to the second were present in the first

The Second Circuit has consistently held that "the facts essential to the barred

second suit need not be the same as the facts that were necessary to the first suit. It is

instead enough that the facts essential to the second were [already] present in the first."

Waldman, 207 F.3d at 110-11 (omitting internal quotations). The Barton doctrine is an

affirmative defense to a suit already filed, in contrast to the Martin-Trigona doctrine

which is a preemptive strike to prevent a suit from being filed. As such, the present suit

Plaintiff commenced on December 4, 2000 is an essential fact to the application of the

Barton doctrine. This essential fact had not occurred at the time of the 1997 proceeding.

Thus, the Barton doctrine was unavailable to Coan in 1997. As a fact essential to the

present suit was not present in the first suit, this factor weighs against finding that the claims are integrally related.

9

C. Dismissal of John Doe Defendants

Plaintiff also alleges that 15 John Doe defendants, presumably employees of the

United States, acted in a negligent manner in furtherance of the RICO scheme.

Plaintiff filed suit on December 4, 2000. As more than 120 days have passed since the filing of the complaint and as Plaintiff has failed to serve or otherwise identify any of these John Does, all claims against the John Doe defendants are dismissed without prejudice. See FED. R. Civ. P. 4(m), 41(b); Figueroa v. Rivera, 147 F.3d 77, 82-83 (1st Cir. 1998).

III. CONCLUSION

Defendant Coan's motion to dismiss, (Dkt. No. 22), is granted. All claims against him are dismissed. All claims against the fifteen John Doe defendants are dismissed without prejudice. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, March __ 2002.

s/ peter c. dorsey

senior united states district judge

FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Peia v. Bankruptcy Court, et als

UNITED STATES COURT OF APPEALS
FILED OCT 22 2002
Rosemarie B. Machechnie, Clerk
SECOND CIRCUIT

Docket Number(s) 02-6138

Motion for: Relief in the Alternative
Set forth below precise, complete statement of relief sought:

In the alternative (to plaintiff's declaration concerning the substance of defendant coan's testimony) to obtain the transcript of defendant coan's testimony before Judge Chatigny on 7-31-97, BKY # 95-51862, DKT # 3:97-cv1165(RNC) U.S.D.C., D.Conn., 212 B.R. 217, 220 (D.Conn.1997), at government expense pursuant to L.R. 2.

MOVING PARTY: Albert l. Peia
0 Plaintiff 0 Defendant
X Appellant/Petitioner 0 Appellee/Respondent

MOVING ATTORNEY: ALBERT L. PEIA
[name of attorney, with firm, address, phone number, and email]
P.O. Box 370434
Reseda, CA 91337-0434
Cellular phone stolen in LA robbery.

albertlouispeia@hotmail.com

OPPOSING PARTY: Defendants

OPPOSING ATTORNEY:_____
(name of attorney, with firm. address, phone number, and email)

Court-Judge/Agency appealed from:
District court, dis. of conn., Dorsey

Please check appropriate boxes:

Has consent of opposing counsel:
A. been sought? No
B. been obtained?No

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? N/A

Has this relief been previously sought in
In this Court?N/A

Is oral argument requested? No

Requested return date and explanation of emergency:
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set: No
If yes, enter date: N/A

Signature of Moving Attorney: Albert L. Peia

Date: 10-17-02 Has service been effected? Yes
(Attach proof of service]

ORDER ON MOTION

IT IS HEREBY ORDERED that the motion is DENIED.

FOR THE COURT,
Roseann B. MacKechnie, Clerk
By Jeanine Cook 2-28-03
Calendar Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

Pe i a

V.

Docket No. 02-6138

Bankruptcy Court

Movant:

Albert L. Peia
P.O. Box 370434
Reseda, CA 91337-0434

Consent sought from adversary(ies)?

Consent obtained from adversary(ies)?

Is oral argument desired?

ORDER

IT IS HEREBY ORDERED that the motion to waive oral argument and submit CD roms be and it hereby is granted.

UNITED STATES COURT OF APPEALS
FILED MAR 27 2003
Roseann B. Mackechnie, Clerk
SECOND CIRCUIT

FOR THE COURT
Roseann B. Mackechnie, Clerk
By: Ana Vargas
Calendar Deputy Clerk

## THE ACT

TITLE 18 – CRIMES AND CRIMINAL PROCEDURE
PART I – CRIMES

CHAPTER 96 – RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

**The Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. §§ 1961-68 (1994)**

Sec. 1961. Definitions

As used in this chapter -

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to

embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1081 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission

of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-2424 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if

the act indictable under such section of such Act was committed for the purpose of financial gain.

(2) "State" means any State of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

Sec. 1962. Prohibited activities.

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of any unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to

conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Sec. 1963. Criminal penalties.

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law –

(1) any interest the person has acquired or maintained in violation of section 1962;
(2) any -
(A) interest in;
(B) security of;
(C) claim against; or
(D) property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and
(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962. The court, in imposing sentence on such person shall

order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes -

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (1) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonable without cause to believe that the property was subject to forfeiture under this section.

(d)

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section -

(A) upon the filing of an indictment or information charging a violation of

section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed form the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, that an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a

hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or

which are necessary to protect the interest of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision of the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasure any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to -

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provision of this chapter;

(2) compromise claims arising under this section;
(3) award compensation to persons providing information resulting in a forfeiture under this section;
(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and
(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to -
(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;
(2) granting petitions for remission or mitigation of forfeiture;
(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;
(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;
(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and
(6) the compromise of claims arising under this chapter. Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such

forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (1), no party claiming an interest in property subject to forfeiture under this section may -

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of

depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interest of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and

cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that -

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section; the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) if any of the property described n subsection (a), as a result of any act or omission of the defendant -

(1) cannot be located upon the exercise of due diligence;
(2) has been transferred or sold to, or deposited with, a third party;
(3) has been placed beyond the jurisdiction of the court;
(4) has been substantially diminished in value; or
(5) has been commingled with other property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

Sec. 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

Sec. 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any

other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issue for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

Sec. 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. a copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

Sec. 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

Sec. 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall -

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced there under with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable

period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall -

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by -

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)

(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the

custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of -

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand

jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising there from has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly -

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated. Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this

section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.